In the High Court of Punjab and Haryana, Chandigarh.

Civil Revision No. 5754 of 2007

Date of Decision: 13.12.2007

Preet and Others

…Petitioners

Versus

Pawan Kumar and Another

…Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. G.S.Punia and Mr. A.S.Sullar, Advocates
for the petitioners

Mr. Vijay Sharma, Advocate
for caveators/respondents.

RAJESH BINDAL, J.

The challenge in the present petition is to the order dated September 5, 2007 passed by learned Additional District Judge, Patiala, whereby the application under Order 41 Rule 27 CPC for leading additional evidence filed by the respondents/appellants was allowed.

The documents sought to be produced in the additional evidence are copy of the judgment dated March 3, 2006 passed by Judicial Magistrate Ist Class, Samana, and copy of the order dated October 5, 2005 granting permission to respondent/appellant No.1 for purchase of property. The application was made on the ground that the documents came into existence after the passing of the judgment/decree against the respondents/appellants.

The facts in brief are that the petitioners/plaintiffs filed a suit challenging sale deed in favour of the respondents/appellants. The suit was decreed on March 9, 2005. The respondents were in appeal before learned lower Appellate Court against the judgment and decree of learned trial Court.

In that appeal, an application under Order 41 Rule 27 CPC was filed for permission to lead additional evidence. Keeping in view the fact that the documents came into existence after the passing of judgment and decree of learned trial Court, the learned lower Appellate Court allowed the application and permitted the respondents/appellants to produce the same in additional evidence vide order dated September 5, 2007. On the request of the petitioners, the case was adjourned for rebuttal evidence.

In the present petition, learned counsel for the petitioners/plaintiffs submits that as far as production of judgment is concerned, he has no objection to the same. However, he has objection regarding the production of an order dated October 5, 2005 granting permission to the respondent No.1 to purchase the property. The primary argument is that relevance of the document has not been considered. Reliance has been placed upon ***Natha Singh and Others v. The Financial Commissioner, Taxation, Punjab and Others (AIR 1976 Supreme Court 1053)*** and ***Kama alias Karan Singh and others v. Parkash Chand (AIR 1985 Punjab and Haryana 341).***

On the other hand, learned counsel for the respondents submitted that the documents sought to be produced by the respondents undisputedly came into existence after the passing of judgment and decree by the trial Court and the same are very much relevant for the proper decision of the appeal. The issue raised in the suit filed by the petitioners was on the plea of fraud in execution of sale deed in favour of the respondents wherein a plea was raised that the respondent No.1 being Government servant, permission to purchase the property was not taken by him. It is only two documents/orders, which the respondents sought to place on record, namely judgment and decree of the Court wherein he was acquitted on the allegations of fraud and the second is permission granted by the State Government to respondent No.1 to purchase the property. Both the documents came into existence after passing of judgment and decree by trial Court and are very much material for the decision of the controversy in the present case.

Having heard learned counsel for the parties, I do not find any merit in the present petition. It is not disputed that the challenge to sale deed by the petitioners in the suit was on the ground of fraud and additionally one of the grounds raised was that respondent No.1 being a Government employee had not obtained permission before the purchase of immovable property. Two documents sought to be produced by the respondents are very

much material for proper decision of the controversy in the present case. The first document, namely the judgment and decree dated March 3, 2006 passed by the Court acquitting the respondents in a trial on the charge of fraud and second being the ex-post facto permission granted by the State Government to respondent No.1 for purchase of property. Technically, relying upon the judgments referred by learned counsel for the petitioners, he may be right that the learned Court below has not discussed the issue in much detail. However, still it could not be denied that both the documents, which came into existence after the passing of judgment and decree by the trial Court, are material and relevant for the purpose of decision of the controversy. At this stage, it is to be seen as to whether the documents are prima facie relevant for decision of the controversy. The merits of the additional evidence shall be considered by the Court below at the time of final arguments of the case.

Accordingly, I do not find merit in the present petition and the same is dismissed.

(Rajesh Bindal)
Judge

December 13, 2007
"DK"